

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENYAN ROGERS,

Petitioner,

v.

CASE NO. 07-CV-11188
HONORABLE PAUL D. BORMAN

BARRY DAVIS,

Respondent.

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ORDER DISMISSING CASE

Kenyan Rogers (“Petitioner”), a state prisoner presently confined at the Newberry Correctional Facility in Newberry, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his convictions for second-degree murder, assault with intent to rob, armed robbery, and possession of a firearm during the commission of a felony which were imposed by the Wayne County Circuit Court in 2001. He has also filed a “Motion for a New Trial or Hearing under *People v. Ginther*” and paid the filing fee for this action.

Petitioner has already filed a habeas action challenging the same convictions with this Court, which is pending before the Court. *See Rogers v. Davis*, Case No. 07-CV-11164. Accordingly, the instant action must be dismissed as duplicative. A suit is duplicative, and subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (internal citations omitted). The instant action is duplicative of his pending first habeas petition. In fact, it appears that Petitioner may have been attempting to file the instant pleadings as part of

his original habeas action, but the documents became separated during the intake process. In any event, because Petitioner challenges the same convictions in both petitions and raises similar claims, the Court will dismiss this second petition as duplicative. *See Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); *Colon v. Smith*, 2000 WL 760711, *1, n. 1 (E.D. Mich. May 8, 2000); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss a habeas petition as duplicative of a pending habeas petition when the second petition is essentially the same as the first petition).

Accordingly, the Court **DISMISSES** the instant case as duplicative. This dismissal is without prejudice to the habeas petition filed as Case No. 07-CV-11164. The filing fee and motion for new trial or hearing filed in this case shall be re-filed in Case No. 07-CV-11164.

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: April 18, 2007

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on April 18, 2007.

s/Denise Goodine
Case Manager